IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.3 OF 1999
IN
ARBITRATION PETITION NO.2 OF 1997
IN
AWARD NO.154 OF 1996

Municipal Corporation of Greater Bombay, a statutory Corporation constituted under the provisions of Bombay Municipal Corporation Act through Chief Engineer (SWD), having his office at Municipal Head Office, Mahapalika Marg, Mumbai-400 001. .. Appellant
(Orig.Petitioner)

v/s.

1. Krishnarai Kamat,
Sole Proprietor of M/s.
National Engineering Services,
having office at No.12,
Neelkanth Apartments, Chembur,
Mumbai-400 089.

2. G.R.Prabhuchimulkar of Mumbai,
Indian Inhabitant, having his
office at 450, 16th Road,
Chembur, Mumbai-400 071. .. Respondents
(Orig.Respondents)

Mr.R.D.Dhanuka with Mr.Vinod Mahadik i/by Ms.A.H.Chheda for appellant.

Mr.Kedar Wagale with Mr.A.S.Khandeparkar for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 14th October, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

The non-speaking award passed by the Arbitrator on 15th July, 1996 was challenged by the present appellant before the learned Single Judge of this court by filing the arbitration petition. Unsuccessful before the learned Single Judge, the

present appeal has been preferred by the corporation.

2. The contention that the claim of the respondents was barred by limitation was raised before the learned Single Judge and has also been canvassed before us. The learned Single Judge was not persuaded by the contention that the claim was barred by time.

3. It is not in dispute that the amount under the final bill was partly paid in June, 1988. The disputes were recorded by the letters dated 8th August, 1988 and 14th October, 1988. The respondent by the letter dated 31st October, 1988 called upon the Commissioner to give his decision which he did not. These facts clearly sow that the claim made by the respondents trough the process of arbitration was not beyond time.

4. The learned counsel for the appellant submitted that the claims 1 to 18 raised by the respondents could not have been granted by virtue of clause 75 of General Conditions of Contract. The learned Single Judge held that clause 75 did not apply to the facts of the present case. Having considered the claims 1 to 18 and clause 75 of the General Conditions of Contract, we concur with the view of the learned Single Judge that clause 75 has no application. Incidentally, we may notice that the

award passed by the Arbitrator is a non-speaking award and it cannot be said that the award by the Arbitrator in respect of the claims 1 to 18 is contrary to the terms of the contract.

5. Having considered all the aspects of the matter, we are of the view that the learned Single Judge did not commit any error in dismissing the petition filed by the appellant challenging the non-speaking award dated 15.7.1996.

6. We are compelled to observe that in a matter like this, the appellant-corporation has unnecessarily dragged the litigation and spent substantial amount of litigation cost. Initially, way back in the year 1989, the first respondent-contractor called upon by the present appellant to appoint the Arbitrator for adjudication of the dispute having arisen between the parties concerning the subject contract. The appellant-corporation did not appoint the Arbitrator and that necessitated the arbitration suit being filed by the present appellant under section 20 of the Arbitration Act. In that suit, this court appointed the Arbitrator to adjudicate the dispute between the parties. The sole Arbitrator passed this award on 15.7.1996. The Arbitrator awarded the claim of the respondent in the sum of Rs.3,51,260/- with simple interest of 15% per annum. The Arbitrator while passing the

award in the sum of Rs.3,51,260/- substantially reduced the claim of the respondent. The appellant was not satisfied even with such reasonable award and filed petition challenging the said award that came to be rejected by the learned Single Judge. As a public body, the corporation is expected to act fairly and should avoid unnecessary litigation.

7. We are of the view that the appellant-corporation must have accepted the award dated 15th July, 1996 gracefully and not taken the matter further by unnecessarily spending the public money. Be that as it may, no case of interference in the impugned order is made out. Appeal is dismissed with costs.

8. The respondents shall be at liberty to withdraw the amount deposited before the court pursuant to the award dated 15th July, 1996 having been made rule of the court.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)